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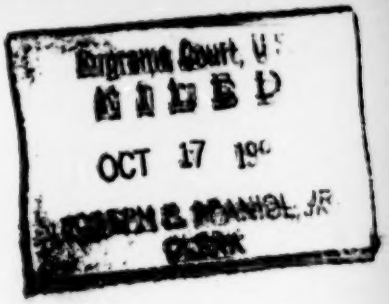

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

MARIE M. MCMAHON
Petitioner,
v.

CHARLES G. ASCHMANN, JR.
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE WEST VIRGINIA SUPREME COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

MARIE M. MCMAHON
Petitioner in pro se
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QUESTIONS FOR REVIEW

1. Does THIS COURT realize that the lower courts are fast destroying rights of litigants provided by the Constitution?

2. Does any court have discretion to act or not act, concerning Constitutional issues presented to said court by Petitioner?

3. Does the court lose jurisdiction of the proceedings before said court when that court fails to act in accord with Constitutional and/or any substantive provision required to give Petitioner due process?

4. WHEN does loss of jurisdiction take place concerning Constitutional issues?

5. Is it proper and provided for under the Supremacy Clause for Petitioner to seek redress from any lower court wherein refusal to grant, or ignoring by said court any type violation of rights of Petitioner, provided for by United States Constitution?

6. Does Petitioner have the right to

petition the government for redress under the First Amendment when the welfare of the public is at stake, as a part thereof?

7. Is any member of the judiciary immune from liability when the facts show any act of conspiracy to pre-determine the outcome of the contriversy?

8. Does THIS COURT realize how much the public (Petitioner) needs to have THIS COURT write strong opinions concerning the above questions to hopefully reiterate and protect the provisions (fundamental) of the United States Constitution, which might tend to stop some of the abuse of said document?

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JURISDICTION OF U.S.SUPREME COURT

On July 19, 1990, West Virginia Supreme Court of Appeals denied Petitioner's appeal (A-1) and affirmed Morgan County Circuit Court's decision of October 30, 1989, (A-2,4) who, in effect, affirmed Alexandria, Virginia Circuit Court decision of February 9, 1987, (A-15).

The Supreme Court of the United States has jurisdiction to review these judgments under the Supremacy Clause of the United States Constitution and 28 U.S.C., sections 1257 and 2106.

II

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. First Amendment to U.S. Constitution.

> Courts shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble and to petition the government for redress of grievances.

2. Seventh Amendment to U.S Const.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise reexamined in any court of the United States than according to the common law.

3. Fourteenth Amendment to U.S. Const., Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. 42 USC, section 1983, Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation custom or usage, of any State or Territory or District of Columbia, subjects, or couses to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity

or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

5. 42 USC,sec. 1985 (2). Conspiracy to Interfere with Civil Rights. Obstructing Justice.

If two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him of his property for lawfully enforcing or attempting to enforce the right of any person, or class of persons, to the equal protection of the laws;

1985(3)Depriving persons of rights or privileges.

If two or more persons in any State ...conspire...for the purpose of depriving, either directly or indirectly, any person...of the equal protection of the laws, or of equal privileges and immunities under the laws... for the purpose of preventing or hindering...all persons within such state ...the equal protection of the laws; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby

another is injured in his person or property, or deprived of having exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of deprivation, against any one or more of the Conspirators.

6. West Virginia Code 30-2-12.

If an attorney-at-law or agent shall, by his negligence or improper conduct lose any debt or other money of his client, he shall be charged with the principal of what is so lost, and interest thereon, in like manner as if he had received such principal, and it may be recovered from him by suit or motion.

7. 7 Am Jur 2d, section 4.

The trust and confidence necessarily reposed in an attorney by clients require in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. He has a duty to support the Constitutions and laws of the United States and the State.

8, 7A C.J.S.,section 272(attorney-client

The case should not be withdrawn from the jury or ruled on as a matter of law where the evidence raises an issue of fact. Issues of fact for the jury include liability for breach of contract or malpractice...the questions of the attorney's negligence in connection with the prosecution...of previous litigation for which employed... loss sustained by client and damages...

III

STATEMENT OF THE CASE

1. This instant action is a spin-off of a case wherein attorney Charlse G. Aschmann, Jr., Respondent, Alexandria, Virginia, was retained and paid by Petitioner to protect the interest of herself and her Principals in a civil action against Farmers and Merchants National Bank, Bank's lawyers, et al.

2. Instead of prosecuting the action, said Respondent acted as follows:

a. Amended twice fully and one count still a third; said count had to subsequently done by a later attorney(4 times in all).

b. Failed to answer defense discovery, causing his clients to be censured $666.00, paid by Petitioner.

c. Failed to get out discovery for his clients.

d. Failed to use Rules of Civil Procedure for benefit of clients.

e. Failed to file pleading to have funds in control of Court released to his clients.

f. Filed fraudulent claim for pay he knew he did not deserve, from his clients.

g. Caused Case No. 84-L-89 to be non-suited and refiling of Case No. 85-L-142.

h. Failed to use available evidence in his possession for benefit of clients.

i. Always stated the case "Winable" but HE did not prosecute same.

j. Allowed defense counsel to intimidate and injure one of his clients (Bart Whirley), with questions in regard to Bart finding his grandmother dead, knowingly, willfully and with malice to try to gain advantage of Bart's emotional instability on discovery.

3. The documented evidence, material and relevant was (is) overwhelmingly on the side of Petitioner/Principals; is prima facia evidence of conspiracy and malicious denials of fundamental civil rights and due process.

4. Respondent actually wrote one letter which, when answered, was of benefit to his clients.

5. Shortly after the "intimidation" of Bart Whirley, Respondent was dismissed from the case with a letter of explanation, why.

6. Petitioner sought two other attorneys who also failed to follow the Constitutions/ laws/ rules. Thus, her fiduciary duty obviously can better be served pro se, and at less cost.

7. Neither of the two newly retained attorneys would prosecute Respondent, though both stated he was wrong; one originally said he would file malpractice action against him. He also seemed to be mad that Respondent had failed to associate with him at that time.

8. When Case No. 10607 was to be prosecuted in Alexandria Circuit Court, Petitioner Principals' attorney (Bowman) withdrew as Petitioner's attorney, so as to allow her to file a counterclaim against Respondent.

9. It was also clear during the proceedings in the 10607 action that the Court and attorneys were cronies and devious...even to Principals, who are under-educated.

10. The Court ruled against the overwhelming evidence on the side of the Petitioner/Principals (documents); took the case from the jury and granted a directed verdict/summary judgment in favor of Respondent for $7,000.00./ A-15 (xxx) Respondent would have received for his share over $9,000.00, if he had played the game according to the rules, per applicable laws to the facts of the case he was retained to prosecute. The Note the Bank ILLEGALLY gained was for $27,717.60.

11. It is obvious that the plan of the attorneys is to divide and win/rule. Petitioner fully intended to file 42U.S.C. 1983/1985 action against Respondent, Bowman, the Court and Johnston, but because she allowed her fiduciary duty to her Principals to come first (still in court on 85-L-142), Respondent was

fast in getting his action filed in West Virginia, Morgan County Circuit Court, to try to enforce his erroneous, illegal judgment in June, 1987.

12. Petitioner filed a verified Complaint in Morgan County (tried to remand to federal court) pleading fraud, conspiracy (1985) denial of civil rights (1983) and lack of jurisdiction...and malpractice is also pled since by law, in Petitioner's opinion, the malpractice has never been disposed of by due process or legally. (A-15)

13. One reason for trying to remove to federal court was to get all defendants in same action, i.e. Bowmsn, Kent, Johnston and Aschmann, but to no avail. District Court, Williams, denied 1983 claim on February 12, 1988, also denied motion to Amend.

14. In fact, Petitioner was so injured and in shock from The District Court's actions (with subsequent attempt to cover-up) that she immediately started work on recon-

sideration so as to give him a second chance to do right. Denial of constitutional rights shocks the conscience of this Petitioner especially since so many Americans have died defending our Constitution...it is why this Petitioner is a widow.

15. Due to the above illegal acts and others not pled herein, Petitioner was late to court on February 22, 1988: Circuit Court had granted Summary Judgment by default before her arrival.

16. Petitioner immediately filed a Rule 60(b) action.

17. Petitioner subsequently successfully pled for trial by jury (void judgment, loss of jurisdiction, denial of civil rights in Alexandria Circuit Court) and a trial date was set for May 17, 1988 (A-16).

18. Said May 17, 1988, trial date was bumped in favor of criminal case.

19. Circuit Court Judge Steptoe again set a trial by jury date of April 13, 1989,

stating there appeared to be "No entitlement of Summary Judgment and Rule 12b, without accompanying affidavit may not be treated as a Motion for Summary Judgment,"(A-13)

> and further that Defendant is entitled to every conceivable grounds for stating a cause of action under a Motion to Dismiss ..accordingly ADJUDGED and ORDERED that Plaintiff's Motion to Dismiss is hereby denied.

Petitioner was about to finally get a trial by jury. (A-11) Trial date was set for April 13, 1989.

20. On April 3, 1989, Judge Steptoe disqualified himself in the case because he stated his mother had baught stock in the BANK (herein referenced)from a trust fund on which he and his Mother were co-trustees.

21. On May 3, 1989, West Virginia Court of Appeals appointed Judge Patrick Henry to the case, who on October 30, 1989, dismissed Petitioner's action instead of setting a new trail date per his calendar, thereby refusing to hear Petitioner's 1983/1985 claims. (A2,4).

22. Circuit Court Judge Henry gave as his reasons in (A-4) for dismissing (a) the Supreme Court left up to the states to decide if a trial by jury should be had; (b) no appeal was taken at state level which would have gotten Petitioner a trial by jury if it forthcoming (c) can't re-try a Virginia case and(d) the Court ruled and not Respondent.

23. Petitioner argued when before the Court that the Supremacy Clause of the United States is higher than the case law cited by counsel; controls, so it says, and every judge in every state shall be bound thereby. We have been denied the right to have a jury decide the facts...that is a fundamental right guaranteed to all of us. Counsel argued that ..."We're here on a cause of action emanating from a federal law, section 1983, and those arguments would be out of place."

24. West Virginia Supreme Court of Appeals refused to hear the case. (A-1). The writ of execution was served before this last

action by the West Virginia Supreme Court.

25. On June 4, 1990, Civil Action No. 90-C-64 was filed by counsel to enforce the selling of Petitioner's home/property...also before final denial by West Virginia Supreme Court...it appears counsel knew the end result therein, in advance. (A-18)

26. (On February 8, 1989, Petitioner filed in Alexandria federal district court a 1983/1985 action against the other three defendants in the above illegal acts (Bowman, Johnston and Kent). Petitioner factually pled denial of civil rights under color of state laws, obstruction of due course of justice and conspiracy to do so to gain end result of injury to Plaintiff...discrimination(invidious) because Plaintiff wanted, and tried, to get the constitutions/laws supported and upheld.

27. Only Johnston put in Motion to Dismiss which was granted. No other Motions were (are)in file; no Complaint answers. Counsel

made it clear he was representing Johnston, nor did he mention other defendants.

28. On page 9, of transcript district court states "Of course Judge Kent is immune, and his motion to dismiss will ge granted on that ground.") emphasis added. mm.

29. This tells Petitioner that the same type ex-parte, pre-determination of the outcome of the controversy, went on in district court as did in circuit court. There is a pattern of such behavior by courts/attorneys which Petitioner has observed (and can document most) with fifteen (15) judges in Virginia and West Virginia. nine are state; six (at least) are federal. They claim they are immune, but under the proper applicable laws, some courts say different in case law. At any rate, all courts KNOW they are violating constitutional rights of this litigant.

30. Some of the above is pled in this Petitioner's Motion to Deny Motion to Appoint Commissioner in Chancery (A-24). Respondent's

Counsel herein also has the Bank referenced herein as a client and the invidious discrimination and other illegal acts continues against this Petitioner. Cronyism-conspiracy is in place to gain the end result of denial of fundamental constitutional rights provided for all in our Counstitution. Such acts rise to constitutional torts and shocks the conscience of decent,moral and prudent persons. This Petitioner certainly has been injured by said unconstitutional, illegal acts and so have her Principals.

IV DISCUSSION OF LAWS APPLICABLE

The Supremacy Clause of the United States Constitution states: (Article 6, Cl 2)

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitutions or Laws of any State to the Contrary notwithstanding.(Emphasis added).

There is no room for doubt in that Law as to the meaning if we give plain and ordinary meaning to the words, as we are instructed to do. This takes care of any lower court ruling which would not be in accord therewith, which THIS COURT should over-rule per the above cited Supremacy Clause. Additionally, such lower court ruling would be bad precedent to be left not overturned.

However, case law--illegal judges, do not and can not, nor should not be allowed to AMEND the Constitution of the United States, nor can such legally be done...we all know it would take an act of Congress. No judge has that power and to do so is at least, an abuse of power, and should be a loss of jurisdiction by said judge.

This Petitioner's fundamental constitutional rights were denied...denied under the color of state law; by virtue of authority of state law by individuals who did so with intent and malice to injure this Petitioner be-

cause she tried to get the laws applied that protected herself and her Principals. The individuals conspired together to gain the end result in the face of overwhelming evidence on the side of Petitioner because of invidious discrimination against her for her refusal to forsake her integrity and her duty to her Principals. Also, the Bank was (is) mad at Petitioner because she caught the initial illegal acts of the Bank, their lawyers and others. Of course, the Bank has more money than does this Petitioner/Principals.

Virginia supposedly follows the Federal Rules of Civil Procedure (so stated in Virginia's Rules).

Under Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 91L Ed 2d 202 (1986) THIS COURT said:

> Under Rule 50(a) of the Federal Rules of Civil Procedure, a trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict, if reasonable minds could differ as to the import of the evidence, however, a ver-

dict should not be directed.

Further on directed verdict--jury determinations, from Anderson, supra, :

> Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether the judge is ruling on a motion for summary judgment or on a motion for directed verdict.

Both are applicable herein, since both summary judgment and directed verdict were mentioned in Judge Kent's Final Order (A-15). This is in direct conflict with the actions of this COURT. But then, Judge Kent does not have to answer to anyone, so it appears.

Additionally, the Fourth Circuit Court of Appeals ruled against its own ruling of the past also. In Garrison v. United States, 62 F 2d 41 (1932) at 6, "Trial judge may not direct verdict against plaintiff, where there is substantial evidence supporting plaintiff's case." Further at 8, "Directed verdict is proper only if there is no substantial evi-

dence to support recovery, or where evidence is all against the plaintiff." This certainly was not the case herein at the Circuit nor District Court level. Judge Parker reminded the courts of the constitutional right to jury trial when he stated in Garrison, supra:

> Where there is substantial evidence in support of plaintiff's case, the judge may not direct a verdict against him, even though he may not believe his evidence or may think that the weight of the evidence is on the other side; for under the constitutional guaranty of a trial by jury, it is for the jury to weigh the evidence and pass upon the credibility.

Since the overwhelming evidence is on the side of Petitioner, the directed verdict in (A-15) alone is prima facia evidence of intent and conspiracy; it takes an arbitrary judge to rule against the weight of evidence.

Both District and Circuit Courts herein ignored Petitioner's DEMAND for jury trial, adequate access to court, due process, etc., (violations of 42 U.S.C. 1983/1985)District Court states in transcript thereof "Insofar as 85(2) is concerned, it could probably

stay--could probably be a claim"...but went on to dismiss on the pretext that there was no proof of conspiracy alleged in complaint. According to law, he could not dismiss under Rule 12, which he did, if there are any facts under which relief can be granted. Conley v. Gibson, 355 U.S. 41, 78 S Ct 99, 2 L Ed 2d 80 and considering a motion to dismiss the factual allegations of the complaint must be accepted as true and all reasonable inferences must be made in favor of the plaintiff.(The same is true in Circuit Court) Mitchell v. King, 537 F 2d 385 (1976). Furthermore, both courts could see from the documents before each of them that the facts alleged and pled were (are) true. ADDITIONALLY, they KNEW under 5 Wright & Miller, Federal Practice and Procedure, that motion to dismiss is generally looked upon with disfavor and rarely granted. (Section 1357, at 598). Also, there is not a conspiracy requirement element under 1983; only (1) violation of constitutional rights

and (2) said violations take place under color of state law. Haag v. Cuyahoga County, 619 F Supp 362 (1985). Both elements certainly were met at the Circuit level and pled in District Court which the Court admitted in transcript. Jury trial was denied by Circuit Court of Alexandria, Virginia and by Morgan County Circuit Court (although set for trial by one Morgan County Circuit Court twice before the appointed judge in effect, acted as appellate court and dismissed on October 30, 1989, thereby over-ruling another circuit court,; Petitioner submits he had no jurisdiction to do, since both are circuit court judges. (see A-2,A-11 and A-16). This is also a denial of First Amendment Rights...access to court to petition government for redress of grievance thus, First and Seventh Amendments violated.

THIS COURT has said that a court can lose jurisdiction of the proceedings before it when said court fails to complete the court (which Petitioner submits happened in Alexandria,

Circuit Court. In Johnson v. Zerbst, 304 U.S. 458,(1938) Mr. Justice Black of this COURT stated:

> A court's jurisdiction at the beginning of a trial may be lost "in the course of the proceedings" due to the failure to complete the court as the Sixth Amendment requires, by providing counsel for the accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed, The judgment of the conviction pronounced by a court without jurisdiction is void...

The above is a criminal case, but the Seventh Amendment should require the same treatment as does the Sixth. Also, under Constitutional Law, Michie's Jurisprudence,pg. 477, it states "The right to a fair and impartial trial in a civil case is as fundamental as it is in a criminal case." Temple v. Moses, 175 Va 320, 8 S.E.2d 262 (1940). Further, "Due process requires that the accused receive a trial by an impartial jury free from outside influences." United States v. Sawyer, 423 F

2d 1335 (4th Cir 1970). (Petitioner maintains that the Bank has placed all sorts of outside influences on her former attorneys and in fact, are still controlling all.)

Further, to show the same due process is due in civil cases, it is stated in Bass v. Hoagland, 172 F 2d 205 (1949):

> We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterly by habeas corpus if for a crime, or by resistance to its enforcement if a civil judgment for money...The right of jury trial, if not waived but denied after demand, the judge usurping the function of the jury, would seem to be similarly an unconstitutional abuse of power.

A proper judge in Virginia in Boyd v. Bulala, 672 F Supp 915 (WD Va 1987) stated in quoting Chief Justice Rehnquist in Parkland Hosiery v. Shore, 439 U.S.332, 99 S Ct 654, 58 L Ed 2d 552 (1979) dissenting:

> The founders of our nation considered the right to trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be ad-

ded. to that of the judiciary.

In colonial America, the Crown's use of bench trials to circumvent the right to a jury was one of the chief grievances of those who advocated independence. Wolfram, The Constitutional History of the Seventh Amendment, 57 Minn L. Rev. 639,654 n 47 (1973). Among the oppressive acts cited in the Declaration of Independence are laws "depriving us, in many Cases, or the Benefits of Trial by Jury." The thirteen new American states all guaranteed the right to trial by jury in civil cases. In fact, "(t)he right to trial by jury was probably the only one universally secured by the first American state constitutions..." L. Levy, Legacy of Suppression: Freedom of Speech and Press in Early American History 281 (1960) quoted in Parkland Hosiery, 439 U.S. at 341, 99 S Ct at 656 (Rehnquist, J., Dissenting).

The ommission of the right to civil jury trial was one of the principal objections raised to the proposed Constitution in the ratification debates in the various states. Wolfram, supra at 667-725. Among the arguments advanced for civil jury trials were "the protection of debator-defendants; the frustration of unwise legislation;... the vindication of the interests of private citizens in litigation against OVERBEARING AND OPPRESSIVE JUDGES; Wolfram, supra, at 670-71.(Emphasis added). Ultimately, these arguments prevailed when Congress passed the seventh amendment in 1789 and VIRGINIA completed the ratification of the first two amendments in 1791, (emphasis added).

Isn't it ironic that Virginia should now

be one of the states through some of their judges, denying trial by jury in civil cases. Please note what the Court said in Boyd, supra

> This Court earlier undertook to analyze the right to civil jury trials provided by the Virginia Consitution in Boyd v. Bulala, 647 F Supp at 788-90. The Court concluded that the right to trial by jury guaranteed in Article 1, section 11, of the Virginia Constitution is equivlent to, or arguably stronger than, the right secured by the seventh amendment,

Therefore, not all judges are like those complained of herein...who discriminate in favor of their cronies, deny and abuse the Constitutions and the rights it provides for Petitioner and all. However those that do so act, should be removed from the bench, in the opinion of this Petitioner.

Under the Supremacy Clause, this Petitioner (and all) have a right to a trial by jury and all judges are bound thereby, to provide same to litigants. Petitioner demanded a trial by jury...the jury function was usurped by the court, so as to take care of

"cronies" instead of duty to justice, in Alexandria Circuit Court; in Morgan County Circuit Court and in District Court, the two later having also denied access to court and meaningful First Amendment Rights also.

Once again Petitioner pleads that exhaustion of state remedies are not necessary where violations of sections 1983 and 1985 are concerned. Clark v. Yosemite Community College Dist., 785 F 2d 781 (1986) and Alacare Inc. North v. Bagglano, 785 F 2d 963 (1986)., therefore, it was not necessary to appeal the Alexandria Case (10607) before filing in federal court. All involved know this is true.

United States v. Ramey, 336 F 2d 512 (4th Cir 1964) tells us "Doing a thing knowingly and willfully implies not only a knowledge of the thing done, but a determination to do it with evil purpose." Also applied to 42 U.S.C. section 1983 (1970). The same is so true with Respondent and all connected herein adverse to Petitioner and her Principals.

Since Mr. Chief Justice Rehnquist was quoted above re jury trials in civil cases in support of the Seventh Amendment, let us see what another member of THIS COURT had to say about WHEN the violations of the constitution takes place. Mr. Justice Stevens stated in his opinion in Daniels v. Williams, " The Constitutional violation is complete as soon as the prohibited action is taken" (106 S Ct at 678)"The independent federal remedy is then authorized by the language and legislative history of section 1983." Since this is true, the Circuit Courts as well as the District Court all lost jurisdiction of the cases before them and their rulings are null and void made thereafter, as herein pled. Further, the Fourteenth Amendment "Due Process" clause provides substantive due process which bars arbitrary action as hereinabove pled. Respondent willfully participated in action with state actor to violate Petitioner's civil rights, which makes him a party to acts under color

of state law and 1983 liable. Such acts by the actors are non-judicial acts, thus all are liable. "To recover damages under federal civil rights statute, plaintiff must prove that he possessed a right, that he was deprived of that right, and that the deprivation was caused by action of a person acting under color of state law." 42 U.S.C.A., section 1983. Singer v. Wadman, 595 F Supp 188(1982) and Haag, supra. Singer, supra,also supports 1985 (3) in that the deprivation of rights caused injury to Petitioner via property loss and emotionally for the deprivation of rights and abuse of the United States Constitution.

Further on immunity, in Barger v. State of Kan., 620 F Supp 1432 it is stated:

> We have, however, consistently held that suits against officers in their individual capacities are not barred by the Eleventh Amendment, citing Back v. Kansas University Psychiatry Foundation, 580 F Supp 1216(D Kan 1983.) We have allowed such to proceed on the theory that when an officer acts unconstitutionally, he is "stripped of his official or representative character and is subjected to the consequences of his official conduct.

Ex Parte Young, 209 U.S. 123, 28 S Ct 441, 52 L Ed 714 (1908). See also Pennhurst State School & Hospital v. Halderman, 465 U.S.89, 104 S Ct 900, 79L Ed 2d 67 (1984).

In Beard v. Udall, 648 F 2d 1264 (1985) on immunity it is stated:

> This court, relying on the Supreme Court's decision in Stump v. Sparkman, 435 U.S. 439, 98 S Ct 1099, 55 L Ed 2d 331 (1978) held that a judge does not enjoy judicial immunity if the judge's action were either non-judicial or taken in clear absence of all jurisdiction. Rankin, 633 F 2d at 850. See also López v. Vanderwater, 620 F 2d 1229, 1233...(1980. We then held that if Rankin's allegations were true, the judge would not enjoy judicial immunity...because of (1) the judge acted in the clear absence of jurisdiction; and(2) by agreeing in advance to grant the petition, he acted non-judicially.

The same is true herein with all three judges...In Alexandria Circuit Court, in Morgan County Circuit Court and in District Court in Alexandria. The Petitioner shows the denial of constitutional rights (2) there had to be pre-determinations of the outcome which is evidenced by the actors (Alexandria circuit court's failure to call upon attorney to argue

for trial by jury while another tried to "cover up" for him with extreme repeating argument when jury had already been dismissed Petitioner later learned...In Morgan County the one court dismissed after another court (both Circuit Courts) had set the case for jury trial twice (A-11,16) dismissal had been denied also (A-13), and in District Court, said Court granted Motion to Dismiss that had not been made by person who was granted the motion (two persons). Such acts show pre-determination of the outcome of the controversy and conspiracies leading to the end result.

Ashelman v. Pope, 769 F 2d 1264 (1981) is also very much on point herein. "Defendants agreed beforehand to deprive him of his rights" is not a judicial act, by judge/prosecutor in that case and further states:

> Both the judge and the prosecutor would be acting outside the scope of their official duties in entering into such an agreement. It is immaterial whether the conspirators' subsequent acts pursuant to the agreement are within their respective

> scopes of authority,...it is the prior agreement that is deemed the essential cause, thus, neither the judge nor the prosecutor would be shielded by immunity.

Petitioner argues that the same is true herein, neither the defense attorneys nor Respondent can be immune when they together with the courts pre-determine the outcome of the controversy. Respondent herein is just as liable as was the prosecutor and the judge in Ashelman, supra, and so are the courts.

(In a related case referenced at 26,27, 28 hereinabove, which is Case No. 89-0173-A, Alexandria District Court, Petitioner submits when Judge Kent (who granted this disputed judgment herein) and former Petitioner attorney Donald Bowman, failed to answer this Petitioner's Complaint therein, or make timely motion, Petitioner, per applicable laws has a default judgment therein on the facts and damages pled by her. Federal Rules of Civil Procedure states at 7, "There shall be

a complaint and answer" and Rule 8 (d) Effect of failure to Deny, it is stated:

> Averments in a pleading to which a responsive pleading is required, other than amount of damage, are admitted where not denied in the responsive pleading.

Since Judge Kent and Attorney Bowman have yet to answer or make motion to this Petitioner's Complaint, we can deem they have admitted the facts and damages as pled. We can also presume both know the applicable laws but no doubt hope to get away with it by the ex parte, pre-determination with the court, also as pled herein at 28 and (A-24).

In Music City Music v. Alfa Foods Ltd., 616 F Supp 1001 (D.C.Va.4th Cir 1985)it says:

> Entry of default judgment was appropriate where defendant had failed to plead or otherwise defend the action after undenied averments were deemed admitted. Fed. Rules. Civ. Proc.8(d) 28 U.S.C.A.

Petitioner pled damages for sum certain in the above referenced case; actual damage of $6929.34; $50.000.00 Compensatory and puni-

tive damage $300,000.00, all of which should be forthcoming to Petitioner and is 100 percent more legal than what those defendants and Respondent did to Petitioner...and are still doing through Respondent's lawyers as referenced herein.)

In this instant action where Respondent also gained a default judgment on February 22, 1988, this judgment, too, was granted illegally. No rule states one SHALL answer a motion for summary judgment. However, said motion was answered which the court had before him was to DENY said Motion and grounds...still wanting a trial by jury (for one). When Petitioner was late to court because of the illegal acts of litigants of the adverse party (Respondent's attorneys and District Court Judge Williams) summary judgment was granted under Article IV sec., 1, first sentence, but all have refused to apply the second sentence properly and 1st paragraph of sec. 2, Article IV, United States Constitution. The general laws"perscribed by

Congress" (and the Constitution) have not been followed to obtain said judgment, to which the illegal actors WANT to apply Full Faith and Credit... so there is still more Constitutional violations, including the entitlement of Petitioner..."to all privileges and immunities" such as harassment and malicious prosecution by Respondent and cronies.

Gillispie v. Civiletti, 629 F 2d 637, (1980) states:

> Section 1985...is derived from the Thirteenth Amendment and covers all deprivations of equal protection of the laws and equal privileges and immunities under the laws regardless of its source. See Griffin v. Breckenridge, 403 U.S. 88, 91 S Ct1790, 29 L Ed 2d 338 (1971) private acts cognizable under section 1985 (3); Williams v. Wright, 432 F Supp 723 (D Or 1976)acts of federal officers can violate section 1985).

PETITIONER IMPLORES THIS COURT TO TAKE JUDICIAL NOTICE OF THE LAWS APPLICABLE TO THE PLED FACTS.

State courts, with exception of Judge Steptoe after Petitioner got his attention, have refused to support the Constitutions and

any federal law. Ryland v. Shapiro, 708 F 2d 967 (1983) tells us "State agents may simultaneously violate both substantive and procedural rights. 42 USCA, sec 1983, Const. Amend 7, 14, and from same cite:

> Mere formal right to access to the courts does not pass constitutional muster, but rather, access must be adequate, effective and meaningful, and interference with access to courts give rise to claim for relief under 1871 civil rights statute, 42 USCA, section 1983.

and as in Ryland, supra, the acts complained of herein..."Could be amalyzed as conspiracy to obstruct justice". Also, Respondent fall under Lynk V. La Porta Superior Court No. 2, 789 F 2d 554 (7th Cir 1986) which states:

> State's unreasonable refusal to allow federal question to be presented in its courts would be violative of the Supremacy Clause, which Supreme Court could rectify on direct review of state court's judgment. U.S. Const. Art 6, cl 2.

A Virginia Case, Gee v. McCormick, 128 S.E. 541 (1925) covers action while appeal is to be had, as herein, and says:

> As the law now stands in Virginia,

> an affirmance of the decree appealed from would as clearly be the taking of the property without due process of law as the enforcement of a judgment in ejectment rendered without process on, or appearance by, the defendant.

And from Stephenson v. Ashburn, 70 S.E. 2d 585 (WV 1952) "A void order is not a verity and can be attacked at any time, directly or collaterally." Also from same cite: "A trial by jury may be waived but the waiver must appear on record." and

> Where defendant appears and demands a trial by jury in a case wherein he is entitled to a jury and such trial is not later waived a judgment entered against the defendant by default is void and may be attacked at any time directly or collaterally. Const. Art. 3, § 13.

It is common knowledge that there has been no amendment to the United States Constitution concerning SeventhAmendment Rights, the First of Fourteenth Amendments nor the Supremacy Clause, nor has 42 U.S,C. 1983/1985 been ruled illegal, therefore, Respondent's judgment is void per applicable laws against Petitioner, and he, and his cronies are all liable for damages.

V FUNDAMENTAL RIGHTS VIOLATED

Petitioner's fundamental Constitutional rights were violated in denial of jury trial, access to court, etc., as were those of her Principals...in Circuit Court Case 10607 and again for Petitioner in 87-C-61/90C-64. Petitioner has tried to show a pattern of such conduct by both state and federal actors. THIS COURT, as well as the other two branches of government, must tkae action to stop the destruction of the United States Constitution. It happens to often, to many others, not just this Petitioner. We have KINGS back again!

VI ARBITRARY ACTION

THIS COURT said in Daniels, supra, that the Fourteenth Amendment protects from such arbitrary action...please take judicial notice of all applicable laws. Also, if default judgment (though different facts and laws) can be given one litigant, certainly the same should apply for benefit of Petitioner, per above

herein pled,and documented herein,and of record.

VII. CONCLUSION

For those reasons stated above, this Writ of Certiorari should issue because West Virginia Supreme Court of Appeals refused to correct the case; to not do so not only abuses the Constitutions but also conflicts with various United States courts of appeals decisions as cited herein and also THIS COURT.

By not hearing the case, West Virginia Supreme Court of Appeals has stamped approval of illegal acts complained of by Petitioner and also thereby decided federal questions which are in direct conflict with the Constitutions and decisions previously made by THIS COURT.

Respectfully submitted,

Marie M. McMahon

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
304) 258-1117

VIII
APPENDIX

APPENDIX

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals Continued and held at Charleston, Kanawha County, on the 19th day of July, 1990, the following order was made and entered:

Charles G. Aschmann, Jr., Plaintiff/Counter-Defendant Below, Respondent

vs.) No. 900702

Marie M. McMahon, Defendant/Counter-Plaintiff Below, Petitioner

On a former day, to wit, July 9, 1990, came the petitioner, Marie M. McMahon, pro se, and presented to the Court her petition praying for an appeal from a judgment of the Circuit Court of Morgan County, rendered on the 28th day of November, 1989, with the record therein accompanying the Petition, which being seen and inspected by the Court, the appeal prayed for is refused.

A True Copy Attest: S/ Ancil G. Ramey
Clerk, Supreme Court of Appeals

A TRUE COPY, ATTEST:
S/ Betty R. Moss
Clerk of the Circuit Court of Morgan County, West Virginia

IN THE CIRCUIT COURT OF MORGAN COUNTY
WEST VIRGINIA

CHARLES G. ASCHMANN, JR.,

PLAINTIFF/COUNTER-DEFENDANT,

V. CIVIL ACTION NO. 87-C-61

MARIE M.MCMAHON,

DEFENDANT/COUNTER-PLAINTIFF.

ORDER

This 30th day of October, 1989, upon the Motion of the Plaintiff/Counter-Defendant, hereinafter "Plaintiff," Charlse G. Aschmann, Jr., by and through his attorney, Daniel T. Booth and Martin & Seibert, for Summary Judgment on "Count Two" of the Counterclaim filed in the herein action by the Defendant/Counter-Plaintiff, hereinafter "Defendant", Marie M. McMahon,

And upon the appearance of the Plaintiff, by and through its attorney, Daniel T. Booth and Martin & Seibert, and upon the appearance of the Defendant, pro se, and upon argument of counsel and parties, and for those reasons further enumerated in the Memorandum of Opin

ion, attached hereto, and made a part of this Order by reference thereto,

It is hereby ADJUDGED and ORDERED that Plaintiff's Motion for Summary Judgment on "Count Two" of Defendant's Counterclaim is hereby GRANTED, and "Count Two" of the Defendant's Counterclaim is hereby DISMISS WITH PREJUDICE, to which action of the Court the Defendant objects and excepts. PGH III

The Clerk is directed to enter this Order as of the day and date first hereinabove written, and to retire this matter from the docket. Defendant's exceptions are hereby noted. November 27,1989, nune pro tunc.

S/ Patrick G. Henry III
Judge

Order Prepared By:

S/ Daniel T. Booth
Daniel T. Booth
Martin & Seibert
P. O. Box 1085
Martinsburg, WV 25401
304-263-1911

CIVIL ORDER BOOK NO. 15
Rec'd 11-28-89 BRM
PAGE 294
DATE 11-28-89

IN THE CIRCUIT COURT OF MORGAN COUNTY,
WEST VIRGINIA

CHARLES G. ASCHMANN, JR.,

PLAINTIFF

VERSUS CIVIL ACTION NUMBER 87-C-61

MARIE M. MCMAHON

DEFENDANT

MEMORANDUM OF OPINION

COURT: The underlying facts have been previously alluded to by the Court. What remains is a 1983 action which essentially is based upon deprivation of right to a jury trial in Virginia, in the proceedings in Alexandria, Aschmann v. McMahon, At which time, upon the conclusion of evidence, motion for directed verdict was made and granted. Now, let's look at what the Plaintiff in that action did that could be construed as violative of law, even assuming absolute right to jury access.

Under the rules and as appropriate, the plaintiff through counsel filed and made a

motion for directed verdict. Motion was ruled upon by the Court and granted. Had the plaintiff not made such a motion at that point in time, he may well have been waiting for objections previously raised throughout the trial, however a procedural consideration, and though plaintiff's counsel may have enthusiastically argued in favor of granting directed verdict and removing the matter from the jury's consideration, the decision to grant that motion was made by the court.

In looking at the applicability of the Seventh Amendment to the State Courts, the Supreme Court has, in effect, left that up to the states. In some states, there is a right to a jury trial in a divorce proceeding. In some states such as West Virginia, those are matters tried before the Court and are, in effect, not even public hearings; they are tried in Chambers. Those are derived from, in effect, the State Constitutions and in some cases going back to the original colonies.

For example, one of the states in which essentially there is a right of jury trial for everything is Georgia, Georgia having been derived as a penal colony for debtors. At the time of the creation of the colony and adoption of the State's Constitution, there was a sincere concern for the absence of a jury one's peers to determine issues.

In any event, the federal government has deferred to the State Constitution insofar as entitlement to a jury trial. It's also interesting to note that this matter was scheduled in Virginia as a jury trial. Not until the conclusion of the evidence was the matter removed from the jury, and again, that having been by virtue of the decision of the Court upon Plaintiff Aschmann's motion.

No appeal was taken in Virginia. The properity or the lack of propriety of the Court in granting the directed verdict was not taken up for appellate review, and regardless of how meritorious Ms. McMahon's case might

have been in the State of Virginia, we will never know that because, in effect, we aren't here to retry the Virginia case. Each of the issues as she now claims constitutes the basis for the 1983 action was available upon appeal in Virginia to obtain her jury trial if she felt that she was deprived of it.

In the transcript of the proceedings before Judge Williams on February 12, 1988, in the Eastern District of Virginia, on page 32 of the transcript, at the time that he determined that the preclusion did attach with respect to the counterclaim actions, he even indicated to Ms. McMahon, and I quote: "You can appeal my decision or if you feel aggrieved by what went on in Alexandria, you can file something up there."

If there was a fraud perpetrated in Alexandria sufficient to justify re-opening of the case under a 60B motion, that has to be done in Alexandria, because the fraud would not have been prepetrated, in effect, by the

Plaintiff making a motion for a directed verdict, but by the Court's granting of that motion.

Entitlement to a trial by jury does not authmatically entitle one for the jury to make the decision if the minimum evidentiary requirements cannot be met to avoid a motion for directed verdict. If that decision by the Virginia trial judge was in error, appellate review was the appropriate mechanism, but the plaintiff should not, in effect, be prejudiced by making what is virtually a mandatory motion to, in effect, claim that if that be the only assertion of wrongful conduct that such a motion was made that that rises to the level of the violation of 1983 rights and that assuming arguendo the absolute right to a jury trial. The bottom line is the plaintiff may have made the motion, but it was the Court that rules. If there was an error, if there was a fraud, even in the absence of appellate review timely made, the matter could be re-

opened in Alexandria, but this Court has no jurisdiction over a trial judge in Virginia. Even Judge Williams acknowledged that when he indicated that --of course, he was not practicing law and could not give advice but the allusion that if she was aggrieved by what went on in Alexandria she could file something up there. The Court is always cognizant of fraud. The fraud has to be brough back before that Court.

A Motion for Summary of Judgment denying the defendant's counterclaim for affirmative relief under 1983 be and the same is hereby granted.

Miss McMahon, I'll show your exception to the Court's ruling. If you wish to make arrangements to have a transcript of today's proceedings typed up for purposes of appellate review, you are welcome to do so.

MCMAHON; I so move, Your Honor.

COURT: Alright, you'll have to contact the Court Reporter with respect to it. You

need to file a deposit, and I'll sign the Order then, directing her to prepare the transcript.

MCMAHON: Whatever you say.

IN THE CIRCUIT COURT OF MORGAN COUNTY,
WEST VIRGINIA

ASCHMANN,
Plaintiff(s)

VS. CIVIL ACTION NO. 87-C-61

MCMAHON,
Defendant(s)

ORDER SCHEDULING TRIAL

This case having been called for trail on regular docket day of the January, 1989 term of this Court, it is ORDERED that this matter come on for a jury trial on the 13th day of April, 1989, at 9:00 AM, with a pre-trial to commence on April 12, 1989, at 1:00 P. M.

It is further ORDERED that the parties shall comply with all the provisions of this Court's Administravive Order Number 86-ADM-86 the provisions of which are hereby incorporated by reference herein. A copy of said Order is available to all counsel in the Office of the Clerk of this Court.

The Clerk shall enter the foregoing this

11th day of January , 1989, and forward attached copies to all counsel and pro se parties of record. If a pro se party is involved in this case, the Clerk is further directed to attach to the copy hereof to be forwarded to said pro se party an attested copy of Administrative Order No. 86-ADM-86.

Martin & Seibert

Marie McMahon

S/ T.W. Steptoe J
Judge of the Circuit Court of
Morgan County, West Virginia

Rec'd
1-13-89
PMH

CIVIL ORDER BOOK NO. 14
PAGE 45
DATE 1-13-89

IN THE CIRCUIT COURT OF MORGAN COUNTY,
WEST VIRGINIA

CHARLES G. ASCHMANN, JR.,

Plaintiff,

vs. CIVIL ACTION NO. 87-C-61

MARIE M. MCMAHON,

Defendant.

ORDER

This 4th day of January, 1989, upon the appearance of the Plaintiff, Charles G. Aschmann, Jr., by and through his attorney, Daniel T. Booth and Martin and Seibert, and the appearance of the Defendant, Marie M. McMahon, pro se, on a former date and upon Plaintiff's Motion to Dismiss for failure to state a cause of action and lack of subject matter jurisdiction of Count 2 of Defendant's Counterclaim filed in the aforementioned matter,

And upon consideration of the Plaintiff's Motion, the Court notes that said Motion was filed under Rule 12B of the West

Virginia Rules of Civil Procedure, without accompanying affidavits, and may not be treated as a Motion for Summary Judgment therefore, and further that Defendant is entitled to every conceivable ground for stating a cause of action under a Motion to Dismiss.

It is therefore accordingly ADJUDGED and ORDERED that Plaintiff's Motion to Dismiss is hereby denied.

Plaintiff's exception to said Order is hereby noted.

The Clerk shall enter this Order as of the day and date first hereinabove written.

S/ T W Steptoe J
Circuit Court Judge

Prepared by:

S/ Daniel T. Booth
Daniel T. Booth
P. O. Box 1085
219 West Burke Street
Martinsburg, WV 25401

Rec'd
1-4-89
PMH

Seen by:

S/ Marie M. McMahon
Marie M. McMahon

CIVIL ORDER BOOK NO. 13
PAGE 742
DATE 1-4-89

VIRGINIA
IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

At Law No. 10607

CHARLES G. ASCHMANN, JR.
Plaintiff

v.

MARIE M. MCMAHON
BART WHIRLEY AND
ALICE WHIRLEY
Defendants

FINAL ORDER

THIS MATTER come before the Court on the merits on January 5, 1987 with all parties present with their counsel except for Mrs. McMahon, who appeared pro se.

Whereupon, a jury of eleven was called and VOIR DIRED by the Court and counsel and thereafter the parties exercised their pre-emptory strikes and the remaining five jurors were put upon their oaths to well and truly try the issues joined in this case.

Thereafter, Plaintiff Aschmann presented his claim and rested his case. The defendant and counter-claimant, Marie McMahon, present-

ed her case as did the defendants Alice and Bart Whirley. Plaintiff then presented rebuttal evidence.

At the close of the evidence plaintiff Aschmann made a motion for summary judgment and directed verdict against defendant McMahon and further made a motion to strike the evidence on Ms. McMahon's counterclaim. Argument was had on these Motions. The Court being of the opinion that the Plaintiff's motion for directed verdict against defendant McMahon and the Plaintiff's motion to strike McMahon's counterclaim should be granted, these motions were granted. Thereafter, Plaintiff moved for voluntary nonsuit against defendants Alice and Bart Whirley, which Motion was granted.

IT APPEARING TO THE COURT that judgment should be entered in accordance with the Court's ruling it is

ADJUDGED AND ORDERED that the judgment is entered on behalf of plaintiff Charles G. Aschmann, Jr., against the defendant Marie

McMahon in the amount of Seven Thousand Dollars ($7,000.00) with interest from January 5, 1987; it is

FURTHER ADJUDGED AND ORDERED that the defendant McMahon's counterclaim be, and the same hereby is, dismissed with prejudice and the defendant McMahon shall recover nothing on her counterclaim; it is

FURTHER ADJUDGED AND ORDERED that this case is dismissed without prejudice as against Alice and Bart Whirley.

AND THIS ORDER IS FINAL
ENTERED 2-9-87

S/ Donald H. Kent
DONALD H. KENT
Judge

SEEN:
s/ John H. Johnston
counsel for Charles G. Aschmann, Jr.

S/ Donald L. Bowman
Donald L. Bowman
Counsel for Alice and Bart Whirley

SEEN AND EXCEPTED TO:
S/ Marie M. McMahon
Marie M. McMahon, pro se

A COPY TESTE
Edward Semonian, Clerk

IN THE CIRCUIT COURT OF MORGAN COUNTY,
WEST VIRGINIA

ASCHMANN_____,
Plaintiff(s)

vs. CIVIL ACTION NO. 87-C-61

MCMAHON_____,
Defendant (s)

ORDER SCHEDULING TRIAL

THIS case having been called for trial on the regular docket day of the January, 1988, term of this Court, it is ORDERED that this matter come on for a jury trial on the 17th day of May, 19 88, at 9:00 AM, with a pre-trial to commence at 7:30 AM on the same date.

It is further ORDERED that the parties shall comply with all the provisions of this Court's Administrative Order Number 86-ADM-86 the provisions of which are hereby incorporated by reference herein. Acopy of said Order is available to all counsel in the Office of the Clerk of this Court.

The Clerk shall enter the foregoing this 27th day of January, 19 88, and forward at-

tested copies to all counsel and pro se parties of record. If a pro se party is involved in this case, the Clerk is further directed to attach to the copy hereof to be forwarded to said pro se party an attested copy of Administrative Order No. 86-ADM-86.

Daniel Booth
Marie McMahon

S/ T W Steptoe J
Judge of the Circuit Court
of Morgan County, West Virginia

Rec'd
1-29-88
PMH

IN THE CIRCUIT COURT OF MORGAN COUNTY,
WEST VIRGINIA

CHARLES G. ASCHMANN, JR.,

Plaintiff,

vs. CIVIL ACTION NO. 90-C-64

MARIE M. MCMAHON
FIRST NATIONAL BANK OF MARYLAND,
CESTUI QUE TRUST
GOLD DOME REALTY CREDIT CORP., F/K/A
STEED MORTGAGE CO, CESTUI QUE TRUST
CHARLSE S. TRUMP, IV, TRUSTEE,
ERNEST S. FRAGALE, TRUSTEE, AND
LINDA S. GIMMEL, TRUSTEE,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, Charles G. Aschmann, Jr., by and through his attorney, Daniel T. Booth and Martin and Seibert, and respectfully complaining states:

1. The Plaintiff, Charles G. Aschmann Jr., is a natural person, presently residing in Alexandria, Virginia.

2. The Defendant, Marie McMahon, is a natural person, presently residing at 103 Pratt Street, Berkeley Springs, Morgan County, West Virginia, 25411.

3. The Defendant, First National Bank of Maryland, is a national banking institution with a business address of P. O. Box 160 Hancock, Maryland, 25424.

4. The Defendant, Gold Dome Realty Credit Corp, F/K/A Steed Mortgage Company, is a Maryland Corporation licensed to do business in the State of West Virginia, and registered with the Secretary of State, with an address of 11141 Georgia Avenue, Wheaton, Maryland, 20902.

5. The Defendant, Charles S. Trump, IV, is a natural person, presently residing in Morgan County, West Virginia.

6. The Defendant, Ernest S. Fragale, is a natural person, whose last known address was c/o Reliable Mortgage Company, 1014 Kanawha Boulevard East, Charleston West Virginia 25301.

7. The Defendant, Linda S. Gimmel, is a natural person, whose last known address was c/o Reliable Mortgage Company, 641 West

Main Street, Bridgeport, West Virginia,26330.

8. On February 22, 1988, a judgment was entered against Marie McMahon in the amount of Seven Thousand and00/100 Dollars($7,000.00) plus pre-judgment and post-judgment statutory interest from the date of January 5, 1987, until satisfied, plus the costs of that action on Plaintiff's behalf expended. The record of said Judgment may be further seen in the record of this Court in that certain case styled Charles G. Aschmann v. Marie M. McMahon Civil Action No. 87-C-61.

9. On January 15, 1990, a Writ of Execution issued against the Defendant, in Civil action No. 87-C-61, which was returned by the Sheriff of Morgan Courty showing by the return thereon that no property could be found from which such execution could be made. Said return may be further seen in the record of this Court in that certain Civil Action No. 87-C-61.

10. The Defendant, Marie M. McMahon, is

the owner in fee simple of that certain piece of property located in Morgan County, and further described in the records of the Morgan County Clerk at Deed Book No 80, page 121, to which reference is made for a more particular description thereof.

11. The Defendant, First National Bank of Maryland, holds a Deed of Trust on said property, which is recorded in the records of the Morgan County Clerk at Deed Book No. 81, page 565, to which reference is made for a more particular description thereof.

12. The Defendant, Gold Dome Realty Credit Corp., F/K/A Steed 449, to which reference is made for a more particular description thereof.

13. The Defendant, Charles S. Trump,IV, is the Trustee of that certain Deed of Trust for the benefit of First National Bank of Maryland.

14. The Defendants, Ernest S. Fragale and Linda S. Gimmel, are the Trustees of that

certain Deed of Trust for the benefit of Gold Dome Realty Credit Corp., F/K/A Steed Moetgage Company.

15. The Defendant, Marie M. McMahon, is the owner in fee simple of that certain piece of property located in Morgan County, and further described in the records of the Morgan County Clerk, at Deed Book No. 152, pages 741 and 743, to which reference is made for a more particular description thereof.

16. Said property is unencumbered.

17. All that certain property owned by Marie McMahon, referenced above, is entitled to a homestead exemption.

18. The value of the properties is of a greater value than $5,000.00.

19. Plaintiff brings this action pursuant to West Virginia Code Section 38-3-9 to enforce payment of its judgment against the Defendant, Marie M. McMahon.

WHEREFORE, Plaintiff prays that Defendant be cited to appear, and to answer this

Complaint, and that this Honorable Court appoint a Commissioner in Chancery to sell the subject real property in order to satisfy that certain Judgment entered on February 22, 1988, and that the value of said property in excess of the homestead exemption be paid to the lien holders in their respective lien amounts and priorities, plus all costs expended.

CHARLES ASCHMANN, JR.
By Counsel

Martin & Seibert

By: S/ Daniel T. Booth
Daniel T. Booth
P. O. Box 1085
219 West Burke Street
Martinsburg, WV 25401
(304) 263-1911

A TRUE COPY, ATTEST:

S/ Betty R. Moss
Clerk of the Circuit Court
of Morgan County, West Virginia

By: S/ Marge McCumbee, deputy

Filed 6-4-90
Betty R. Moss, Clerk
By: Marge McCumbee
Deputy

IN THE CIRCUIT COURT OF MORGAN COUNTY,
WEST VIRGINIA

CHARLES G. ASCHMANN, JR.

Plaintiff,

v. Civil Action No. 90-C-64

MARIE MCMAHON
FIRST NATIONAL BANK OF MARYLAND
GOLD DOME REALTY CREDIT CORP., F/K/A STEED
CHARLES S. TRUMP, IV,
ERNEST S. FRAGALE,
LINDA S GRIMMEL,

Defendants.

MOTION TO DENY MOTION TO APPOINT
COMMISSIONER IN CHANCERY

Comes now the Defendant Marie M. McMahon, pro se, to move this Court to DENY MOTION TO APPOINT COMMISSIONER IN CHANCERY ON THE GROUNDS AS FOLLOWS:

1. There is still further appeals available to Defendant.

2. The Plaintiff, (Defendant's former attorney) in conspiracy with his attorney, John H. Johnston, and another of Defendant's former attorneys, Donald L. Bowman, denied Defendant's Constitutional Rights provided her

(and all) by the First, Seventh and Fourteenth Amendments to the United States Constitution (as well as those Articles of the Commonwealth of Virginia Constitution which are in harmony with the United States Constitution) in order to obtain the judgment which is the subject of this litigation.

3. Same actors as set forth in item 2 above also conspired to obstruct the due course of justice in connection with same civil action (Case No. 10607) Alexandria, Virginia Circuit Court, wherein said judgment was illegally granted.

4. The same has been pled in another case, Civil Action No. 89-0173-A, Federal District Court, Eastern Division, Alexandria, Virginia, appealed to U. S. Supreme Court.

5. In dismissing the above referenced case District Court Judge Bryan sataed Judge Kent's Motion to dismiss would be granted on the grounds of immunity....(matter of record.

6. One small problem, Judge Kent had no such Motion before Judge Bryan, per the documented facts. (Shows more conspiracy and ex parte, pre-determination of outcome of controversy...impeding and hindering the due course of justice, etc.) Nor was there an answer to the Complaint by either Judge Kent or Mr. Bowman in the form or pleadings...nor was there a Motion by Bowman to dismiss. Counsel for Johnston made it clear he was representing Johnston...matter of record.

7. These acts by said actors are a continuation of just such blatant disregard for the laws applicable to us all, which started in 1982, and still continues. Oaths of Office mean nothing apparently, nor do most of the laws , per facts, except the ones they made (make) per facts of record.

8. Some of these facts are not documented before the United States Supreme Court (Case No. 89-1969) with a plea for that Court

to please take judicial notice of all applicable laws, which include Rule 7 ("There shall be a complaint and answer")...and Rule 8, Effect of failure to deny at (d) ("Averments in a pleading to which a responsive pleading is required, other than amount of damage, are admitted when not denied in the responsive pleadint.") Therefore, Judge Kent and Donald L. Bowman have admitted the allegations as pled in this Defendant's Complaint therein.

9. The above relates to this action herein, since Judge Kent is the court who illegally ruled for this judgment. Having "Admitted" the above, Defendant submits said judgment herein, is void for want of jruisdiction from a constitutional standpoint, per the laws applicable, as cited herein and elsewhere as all lawyers and judges heretonow KNOW!

10. Defendant feels sure that the United States Supreme Court will so state...they have

in the past, per cases as cited in 87-C-61 and other related cases, both state and federal.

11. Finally, unless there is a judge appointed to hear this case, Defendant is of the opinion that both Judges Steptoe/Henry must recuse themselves herein, since both have cases pending in the courts (federal) against them with this Defendant as a Plaintiff.

WHEREFORE, DEFENDANT PRAYS that both (or either) Judge Henry or Steptoe please recuse themself from this case and that the court DENY MOTION TO APPOINT COMMISSIONER IN CHANCERY.

Respectfully submitted,

S/ Marie M. McMahon
Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV25411
304) 258-1117

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I, Marie M. McMahon, pro se, Defendant in the foregoing

action, have served a true copy of the foregoing Motion to Deny Motion to Appoint Commissioner in Chancery, this 10th day of September, 1990, by U.S.Mail, postage prepaid, first class, to the following:

Daniel T. Boeth
Martin and Sibert
P. O. Box 1286
Martinsburg, WV 25401

Charles S. Trump, IV
Fairfax Street
Berkeley Springs, WV
25411

Ernest Fragale
Reliable Mortgage Co.
1014 Kanawha Blvd. E
Charleston, WV 25301

John R. Stopa
Gold Dome Realty Credit
Corp., F/K/A Steed
205 Park Club Lane
P. O. Box 9000
Buffalo, N Y 14221

Linda S. Gimmel
Reliable Mortgage Co.
643 W. Main St.
Bridgeport WV 26330

First National Bank of Maryland,
Cestui Que Trust
P. O. Box 160
Hancock, Maryland 25424

S/ Marie M. McMahon
Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV
25411
304) 258-1117